Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
	)	
Promotion of Competitive Networks	)	WT Docket No. 99-217
In Local Telecommunications Markets	)	

REPLY COMMENTS OF SBC COMMUNICATIONS, INC.

SBC Communications, Inc. (SBC) hereby submits its reply comments in response to this Further Notice of Proposed Rulemaking (FNPRM). Most commenters who addressed the issue agree with SBC that the Commission should continue to allow carriers to enter into preferential marketing arrangements with property owners, because such arrangements facilitate the deployment of new services while promoting competition and preserving customer choice. The Commission should not adopt a nondiscriminatory access requirement or impose discriminatory multi-tenant environment (MTE) access requirements that apply only to incumbent local exchange carriers (ILECs). Moreover, the Commission should reject proposals to artificially expand the definition of "rights-of-way" far beyond the bounds of what is reasonable or lawful and proposals to modify its existing demarcation rules.

I. The Commission Should Continue To Allow Carriers And Property Owners To Enter Into Preferential Marketing Arrangements.

Most commenters who addressed the issue support continuing to allow carriers and property owners to enter into preferential marketing arrangements.[1] These

[1] Broadband Office Communications, Inc. ("Broadband Office") Comments at 16-17; CoServ, LLC ("Co-Serv") Comments at 7-8; Cypress Communications, Inc. ("Cypress") Comments at 11-12; Real Access Alliance Comments at 66-67; Smart Buildings Policy

arrangements strike a reasonable balance between the need to provide carriers with an economic incentive to serve MTEs and the goals of promoting competition and preserving customer choice. As Broadband Office notes, preferential marketing arrangements are a sign of vigorous competition in the local telephone market in accordance with the goals of the Telecommunications Act of 1996.[2] Such arrangements allow property owners to obtain higher quality services at a cheaper price, while creating an incentive for the carrier to make the significant investment that is often necessary for in-building telecommunications infrastructure.[3] The real world experience of numerous carriers demonstrates that – as long as customer choice is preserved – preferential marketing agreements provide significant economic incentives to deploy new services and do not harm competition.[4]

SBC believes the investment incentives created by preferential marketing arrangements obviate the need for exclusive access contracts. While some commenters argue that carriers will not risk the infrastructure investment necessary to provide service in residential MTEs without exclusive access contracts,[5] any incremental benefit of such a contract is outweighed by the harm caused by depriving end users of the ability to choose their telecommunications service provider. This is particularly true in the case of

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Project ("SMPP") Comments at 45; Sprint Corp. Comments at 9-10; Verizon Comments at 5-8.

[2] Broadband Office Comments at 16-17.

[3] *Id.* at 18.

[4] *See, e.g., Id.* at 18-19; CoServ Comments at 23-24; Cypress Comments at 11-12.

[5] Community Associations Institute Comments at 7-8; Co-Serv Comments at 3-4.

residential end users, who individually have little bargaining power in dealing with property owners. To further ensure that customer choice is preserved for all, SBC agrees with other commenters that the Commission should extend the prohibition on exclusive access contracts to residential MTEs.[6]

II. The Commission Should Not Adopt A Nondiscriminatory Access Requirement.

The Commission should not adopt an ill-advised and unworkable requirement that prohibits carriers from serving end users in an MTE unless the property owner chooses to provide nondiscriminatory access to all carriers.[7] This requirement effectively punishes end users by depriving them of service due to some action (or inaction) on the part of the property owner. Moreover, such a requirement would be completely unworkable in practice because carriers have no way to monitor, let alone control, the behavior of property owners. Unlike the prohibition on exclusive access contracts, a nondiscriminatory access requirement exceeds the authority of the Commission because it amounts to direct regulation of the property owner.

Further, as SBC indicated in its initial comments, the Commission must take into account the effect that a nondiscriminatory access requirement would have on ILEC carrier-of-last-resort obligations.[8] An ILEC cannot be put in the position of being required by a state to serve *all* end users while at the same time being prohibited by the

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[6] AT&T Comments at 39-41; BellSouth Comments at 9; RCN Telecom Services, Inc., Utilicom Networks LLC and Carolina Broadband, Inc. (RCN) Comments at 10-14; SBPP Comments at 33-34.

[7] SBPP Comments at 8-17; Nebraska Public Service Commission (PSC) Comments at 1.

[8] SBC Comments at 2.

Commission from serving some of those same end users because a property owner chooses not to provide nondiscriminatory access. Similarly, an ILEC cannot be required to serve end users if the property owner chooses not to authorize the use of inside wiring under its ownership and control.[9] In sum, the Commission and state regulators must be careful to avoid creating conflicting obligations.

III. The Commission Should Not Adopt MTE Access Requirements That Discriminate Against ILECs.

The Commission should be skeptical of comments that seek to impose access requirements only on other categories of carriers. AT&T, for example, argues that the Commission should prohibit ILECs, but not CLECs, from entering into preferential marketing arrangements.[10] There is no legitimate reason to give CLECs an artificial advantage in the market by imposing a discriminatory MTE access requirement that applies only to ILECs.[11] As discussed above, preferential marketing arrangements create positive deployment incentives and should be permitted for all carriers.

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[9] The Florida PSC acknowledges that an ILEC's obligation to provide dialtone extends only to the demarcation point, and therefore an ILEC must be relieved of any responsibility to ensure that an end user has dialtone at its premises if the demarcation point is changed to the MPOE. Florida PSC Comments at 4. To address this situation, the Florida PSC requires that the demarcation point in MTEs be established at each end user's premises. *Id.*

[10] AT&T Comments at 43-46. AT&T and CoServ both raise unfounded and irrelevant allegations regarding SBC in their comments. In particular, AT&T raises issues relating to subloop provisioning, even though the Commission has expressly stated that issues regarding compliance with the UNE loop rules are beyond the scope of this proceeding. *Competitive Networks Order* at n.137. Likewise, the issue of how much compensation (if any) should be paid for inside wiring being managed by CoServ is not properly addressed in this proceeding and is already being addressed in two separate dockets before the Public Utility Commission of Texas.

[11] Some commenters argue that certain types of properties (*e.g.*, government buildings, educational institutions, health care facilities) should be exempt from any

Likewise, it makes no sense to impose a nondiscriminatory access requirement on ILECs, but not CLECs, as Cypress suggests.[12] The argument that an exclusive contract is the result of legitimate business motives if it involves a CLEC, but improper monopoly motives if it involves an ILEC is absurd. A CLEC that has wired a building has no less market power than an ILEC in a comparable position and should be held to the same requirements. If anything, a property owner that has an interest in a CLEC like Cypress has *even more* incentive to discriminate against competing providers.[13] The best way for the Commission to ensure that all carriers have the incentive to serve MTEs and all customers have their choice of service provider is to adopt nondiscriminatory MTE access requirements.

IV. The Commission Should Not Adopt An Unreasonable And Unlawful Definition Of "Rights-Of-Way."

The SBPP urges the Commission to construe the definition of "rights-of-way" in Section 224 liberally so that a CLEC would have a broad right of access in any area a carrier conceivably could utilize to provide service, even if the area is not actually being used.[14] This broad definition also would include so-called "inherent" rights to access space that is needed to deploy new technologies, even if the space was not included in the

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nondiscriminatory access requirement. Creating exceptions based on the unique aspects of a property do not necessarily raise nondiscrimination concerns, provided all carriers are subject to the same rules.

[12] Cypress Comments at 3-9.

[13] Broadband Office defends revenue-sharing agreements between property owners and CLECs in its comments, but it ignores the practical reality that such agreements create greater incentives to exclude competitors. *See* Broadband Office Comments at 18-19.

[14] SBPP Comments at 20-21.

actual agreement between the original carrier and the property owner. Because the expansive definition proposed by SBPP does not exist in the law today, SBPP argues that the Commission has the authority to ignore state law and exercise its power of eminent domain on behalf of CLECs through Section 224.[15]

Despite SBPP's rhetoric, the Commission cannot ignore the significant legal and constitutional deficiencies of such an overbroad definition of rights-of-way. SBPP's proposed definition is more than just a liberal interpretation of Section 224, it is a wholesale revision of the statute that serves the interests of the SBPP members. Moreover, SBPP's proposed definition violates constitutionally protected property rights. SBPP argues that property owners should not be allowed to "veto" CLEC access to rights-of-way because Section 224 assumes the owner already has granted the incumbent utility an interest in the right-of-way.[16] That is nonsense. The property owner typically imposes strict limitations on an incumbent utility's access to rights-of-way, and SBPP cannot simply assume these limitations away and eviscerate the inherent right of property owners to control access to their property. The Commission lacks the statutory and constitutional authority to override established state law definitions of right-of-way and property owner intent in the manner suggested by SBPP.

V. The Commission Should Not Modify Its Demarcation Rules

One commenter suggests that the Commission should consider requiring ILECs to move the demarcation point to the minimum point of entry (MPOE) at the request of a

[15] *Id.* at 28, n.83.

[16] *Id.* at 31.

CLEC, even if the property owner has not made such a request.[17] The problem with this proposal is that it infringes on the rights of the property owner. In effect, a CLEC would have the ability to trigger the reconfiguration of the wiring in the property owner's MTE and cause the property owner to incur the cost of relocation.[18] The Commission does not have the authority to vest CLECs with that type of power at the expense of the property owner. In addition, the proposal would be unworkable in practice because one CLEC's decision about where the demarcation point should be located on a property would affect every other CLEC providing service on the premises.

VI. Conclusion

For the foregoing reasons, the Commission should continue to allow carriers to enter into preferential marketing arrangements with building owners. The Commission should not adopt an unworkable and unlawful nondiscriminatory access requirement or adopt MTE access rules that discriminate against ILECs. Moreover, the Commission

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[17] Nebraska PSC Comments at 1.

[18] RCN's comments discuss the charges that are assessed on CLECs for establishing a single point of interconnection for an MTE, which has nothing to do with the demarcation point issues raised in this proceeding. The Commission previously addressed the single point of interconnection issue in local competition proceeding and clearly held that the ILEC and CLEC should negotiate the terms of any reconfiguration of the network, including the appropriate compensation. *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order, 15 FCC Rcd 3696, 3788 (1999). In any event, costs associated with providing a single point of interconnection should not be shifted to property owners or other ILEC customers because they are being incurred solely for the benefit of the CLEC. RCN's comments also include a baseless allegation by Utilicom that it takes up to six months for Ameritech to complete the network reconfiguration required for a single point of interconnection. RCN Comments at 28 n.15. The primary cause of any delay has been Utilicom's foot-dragging in negotiating and deciding whether to move forward with the network reconfiguration. It has never taken Ameritech six months to complete the work once Utilicom has committed to the reconfiguration. In fact, it typically takes Ameritech only a few weeks.

should reject proposals to expand the definition of "rights-of-way" and proposals to modify its existing demarcation point rules.

Respectfully Submitted,

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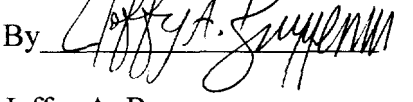
By 

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February 21, 2001

CERTIFICATE OF SERVICE

I, Lacretia Hill, do hereby certify that on this 21st day of February 2001, a copy of the foregoing "Reply Comments" was served by U.S. first class mail, postage paid, to the parties listed on the attached sheets.

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